

**WHITE HOUSE OFFICE OF POLITICAL AFFAIRS: IS  
SUPPORTING CANDIDATES AND CAMPAIGN  
FUND-RAISING AN APPROPRIATE USE OF A  
GOVERNMENT OFFICE?**

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**HEARING**  
BEFORE THE  
**COMMITTEE ON OVERSIGHT  
AND GOVERNMENT REFORM**  
**HOUSE OF REPRESENTATIVES**  
**ONE HUNDRED THIRTEENTH CONGRESS**

SECOND SESSION

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JULY 16, 2014

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## CONTENTS

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Hearing held on July 16, 2014 .....	Page 1
-------------------------------------	-----------

### APPENDIX

Correspondence in July 2014 between The White House and the House Oversight and Government Reform Committee, submitted by Chairman Issa .....	8
Testimony of Carolyn Lerner, Special Counsel and Ana Galindo-Marrone, Chief, Hatch Act Unit U.S. Office of Special Counsel .....	17



**WHITE HOUSE OFFICE OF POLITICAL AFFAIRS: IS SUPPORTING CANDIDATES AND CAMPAIGN FUND-RAISING AN APPROPRIATE USE OF A GOVERNMENT OFFICE?**

Wednesday, July 16, 2014,

HOUSE OF REPRESENTATIVES,  
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM,  
WASHINGTON, D.C.

The committee met, pursuant to notice, at 10:00 a.m. in room 2154, Rayburn House Office Building, the Honorable Darrell Issa [chairman of the committee], presiding.

Present: Representatives Issa, Mica, Farenthold, Lummis, Woodall, Lankford, DesJarlais, Chaffetz, Jordan, Bentivolio, Meadows, Turner, Gowdy, Cummings, Norton, Connolly, Tierney, Lujan Grisham, Welch, Kelly and Horsford.

Staff Present: Alexa Armstrong, Majority Legislative Assistant; Melissa Beaumont; Majority Assistant Clerk; Molly Boyd, Majority Deputy General Counsel and Parliamentarian; Lawrence J. Brady, Majority Staff Director; Ashley H. Callen, Majority Deputy Chief Counsel for Investigations; Sharon Casey; Majority Senior Assistant Clerk; Steve Castor, Majority General Counsel; John Cuaderes, Majority Deputy Staff Director; Lemar Echols, Majority Counsel; Adam P. Fromm, Majority Director of Member Services and Committee Operations; Linda Good, Majority Chief Clerk; Frederick Hill, Majority Deputy Staff Director for Communications and Strategy; Christopher Hixon, Majority Chief Counsel for Oversight; Caroline Ingram, Majority Counsel; Ashok M. Pinto; Majority Chief Counsel, Investigations; Andrew Rezendes, Majority Counsel; Jessica Seale, Majority Digital Director; Andrew Shult, Majority Deputy Digital Director; Jonathan J. Skladany, Majority Deputy General Counsel; Katy Summerlin, Majority Press Assistant; Sarah Vance, Majority Assistant Clerk; Rebecca Watkins, Majority Communications Director; Krista Boyd, Minority Deputy Director of Legislation/Counsel; Marianna Boyd, Minority Counsel; Aryele Bradford, Minority Press Secretary; Susanne Sachsman Grooms, Minority Deputy Staff Director/Chief Counsel; Jennifer Hoffman, Minority Communications Director; Elisa LaNier, Minority Director of Operations; Juan McCullum, Minority Clerk; and Dave Rapallo, Minority Staff Director.

Chairman ISSA. Good morning. The committee will come to order.

Today's hearing is on the White House Office of Political Affairs: is supporting candidates and campaign fund-raising an appropriate use of a government office?

The Oversight Committee exists to secure two fundamental principles. First, Americans have the right to know that the money Washington takes from them is well spent. Second, Americans deserve an efficient and effective government that works for them.

Our duty on the Oversight and Government Reform Committee is to protect these rights. Our solemn responsibility is to hold government accountable to taxpayers because taxpayers have a right to know what they get from the government.

Our job is to work tirelessly in partnership with citizen watchdogs to deliver the facts to the American people and bring genuine reform to the Federal bureaucracy. This is our mission.

Last night, the committee received a deeply disturbing letter from the White House Counsel. The Counsel declared that a senior advisor to the President, David Simas, a witness who had been subpoenaed to testify here today, was “immune from congressional compulsion to testify.”

This is at odds with rulings from our Judicial Branch about checks and balances. It is directly in conflict with the case known as *Miers Bolton*, a lawsuit brought by the Democrats and then-Chairman John Conyers when they were in the majority.

A federal judge wrote that senior advisors to the President of the United States are “not absolutely immune from congressional process.” Oversight of political activities in the White House has frequently been a divisive issue and it has been an issue over which this committee has asserted jurisdiction and oversight on a bipartisan basis over the last four committee chairmen while I have been a member of the committee.

For example, in 2007, former committee Chairman Henry Waxman initiated a series of investigations into improper political activities in the Bush Administration. During the committee’s two year investigation, the staff interviewed 18 political appointees, including President Bush’s political directors, in other words, the same individual we are not getting today, and received nearly 70,000 pages of documents.

For those who do not know what 70,000 pages of documents look like, it is 14 banker boxes filled with documents. Even the chairman of the Republican National Committee received a subpoena requiring production of emails.

The committee’s current investigation has looked much different. It has exercised patience for months and gave the White House extensive opportunities to explain concerns through briefings and document productions.

In his first run for President, then Senator Obama campaigned on closing the White House Political Office. In January 2011, three years into his term, the Office of Special Counsel concluded that the White House Office of Political Affairs violated laws, namely the Hatch Act, designed to keep taxpayers from paying for political activities by government workers, the same the White House announced the closure of the political office. That office remained closed for almost three years.

In January 2014, the White House announced the reopening of its political office. The office’s new name is Office of Political Strategy and Outreach or OPSO. In March, the committee sought information about the relaunch of this political office in an effort to con-

tinue this committee's legacy of overseeing the White House political office.

This request came as the committee learned that two members who served in President Obama's campaign had violated the Hatch Act by abusing their positions to aid overtly political campaign efforts.

In March 2012, the United States Labor Secretary Hilda Solis, a sitting member of the President's Cabinet, engaged in prohibited activity outlined in the Hatch Act. The Los Angeles Times reported that Secretary Solis had solicited a donation from a subordinate Labor Department employee.

The committee has now come to have possession of a voice mail and I would ask that it be played now.

[Voice Mail played.]

Chairman ISSA. That recording was a message Secretary Solis left on the phone of a subordinate employee at her department and was the subject of complaint made to the Office of Special Counsel.

Hatch Act violations have been a problem under all Administrations. This makes the claim by this Administration that they are doing everything right and should be immune from oversight all the more indefensible.

It is deeply ironic that an Administration claiming to be the most transparent ever has resisted oversight of its political office and offered less cooperation than its predecessors. Today's hearing was intended to be an opportunity for Congress to assess how the Administration has tried to address the issues raised by the Office of Special Counsel's 2011 report on political activity.

That report found OPA was inherent in violation of federal law because taxpayer dollars were being used to pay the salaries of staff who conducted political activities. Surprisingly, the White House did not consult with the Office of Special Counsel before reopening OPA, despite the agency's critical role in enforcing the Hatch Act.

The American people have a right to know that the tax dollars being spent are not spent on political activities of Republicans or Democrats. This committee is obligated to shed light on improper use of taxpayer money for political gain. This committee has an obligation to look into whether it is happening or not.

We do not and should not need a smoking gun in order to look into whether or not taxpayer dollars that are being spent are being spent properly. An inherent tenet of this committee has always been if taxpayer dollars are being spent, if the power of the government is being used, then we have jurisdiction. That has not changed and will not change under leaders of either party.

Unfortunately, the most key witness, Mr. Simas, who serves as the Director of White House Political Office, has chosen to defy the committee's legal obligation and its subpoena. The panel of witnesses who are here today, I want to thank you for your appearing, particularly Ms. Lerner, who I know had to make significant changes in her otherwise busy schedule to be here. I would never have brought you here unless I thought we were going to have a full complete hearing.

The committee wrote Mr. Simas on July 3, 2014 to invite him to today's hearing. White House Counsel Neil Eggleston, wrote to me

on July 10, 2014, stating that the request of Mr. Simas to testify was not appropriate. I then authorized a subpoena for Mr. Simas to appear after staff consultation with the Minority. The subpoena was served on July 11, 2014 and the White House accepted service.

As one of our witnesses has chosen not to appear, we will be unable to have a full and fair hearing. Nevertheless, we will offer opening statements. At this time I would ask unanimous consent to place the correspondence between the White House and this committee in the record. Without objection, so ordered.

Chairman ISSA. Without objection, the Chair is authorized to declare recess of the committee at any time. With that, I recognize the Ranking Member, Mr. Cummings, for his opening statement.

Mr. CUMMINGS. Thank you very much, Mr. Chairman.

For the past 18 years, I have been deeply honored to serve as a member of the House of Representatives, representing 700,000 people from the great State of Maryland.

At the same time, I have been truly honored on every day of that 18 years to serve on this committee. I also have tremendous respect for this committee and the chief investigative body of the House that it is.

For these reasons, I strongly support the authority to issue subpoenas, when necessary, to require people to provide information to fulfill our constitutional responsibilities, but I cannot and I will not support the abuse of this very powerful authority when it serves no legitimate purpose and where there is no evidence that a witness did anything wrong.

These actions do not enhance our authority as a committee. They undermine it. They degrade it and they make us weaker. They distract and they lead to dysfunction and if you want to be effective and efficient in the things we do, then the last thing we need is distraction and dysfunction.

Last Friday, Chairman Issa issued a unilateral subpoena to compel David Simas to testify here today. Mr. Simas is a senior advisor to the President of the United States of America and everyone on this committee knows the doctrine of separation of powers. As a matter of fact, it was first introduced to me in middle school.

We do not simply haul in one of the President's top advisors at will. There must be a valid reason. There must be a predicate. There must be a justification, some evidence that this official engaged in some type of inappropriate activity. That foundation simply does not exist.

On Friday, I wrote a letter to the Chairman formally objecting to the subpoena. I noted that he has already issued nearly 100 subpoenas without any debate or vote of this committee. This is more than all three previous chairmen combined in less than half the time.

I also noted that his unilateral subpoenas began to spike last month after Speaker Boehner announced that he was taking the Benghazi investigation away from this committee and transferring it to the new Select Committee.

For example, the Chairman issued a subpoena to the Secretary of State without even calling to see if he was available to testify. He later withdrew the subpoena.

The Chairman also issued a subpoena to the IRS Commissioner in an attempt to hold the first public hearing on Lois Lerner's emails. That failed and the Committee on Ways and Means went first.

Then on Friday, Chairman Issa proposed the latest subpoena. The subpoena was not based on anything Mr. Simas did. It was based on the fact that the White House violated the Hatch Act six years ago under the Bush Administration. The committee has identified no evidence that Mr. Simas or anyone in his office did anything inappropriate.

In my letter, I asked Chairman Issa not to issue the subpoena. If he thought I was wrong, then I asked him to bring it before the committee for a vote, but he ignored my concerns. He did not reply to my letter, did not call a committee vote, he just issued the subpoena by himself.

These actions directly contradict the pledges made by the Chairman during this committee's first meeting four years ago in 2011. I shall never forget that meeting. It started off with a prayer by our former Chairman Ed Towns. I would now like to play a video clip from that meeting so that we can remember back then and those who may not have been here they need to see this. Play the clip, please.

[Video shown.]

Mr. CUMMINGS. Mr. Chairman, those were your words; they were not mine. I said something else in that hearing and I cited an old proverb. It basically said that if you want to go fast, go alone but, if you want to go far, go with others together. That was four years ago.

When I raised concerns, you did not take them seriously. You did not ask other members if you were nuts or if you were wrong. When I asked for a vote, you ignored my request. Since you have been chairman, you have not held a single vote on even one of your nearly 100 subpoenas.

One of the things that concerns me about this committee and this Congress is every two years when we raise our hands and swear to protect the citizens of our country, there is something that underlies that. That is that we have a duty to preserve this democracy that we inherited when we came upon this earth.

Mr. Chairman, with the utmost respect, for this institution, because this is not about me, this is not about this committee. This is about generations yet unborn. I urge you to change course. This is supposed to be a deliberative body.

The members of this committee, I will say it and say it until I die, the members, each one of them, represents 700,000 plus people, 700,000. The members should have the chance to deliberate, especially on matters as serious as compelling the testimony of a senior presidential advisor.

It is time for this committee to stop serving as the center stage for political theater and fulfill its responsibilities under the Constitution to conduct responsible oversight.

Then the Chairman cited the Miers case and I am glad he did. In Miers, when the Bush Administration claimed executive privilege to prevent the White House Counsel, Harriet Miers, from testifying before the House Judiciary Committee in 2007 and 2008, the

committee had a legitimate investigation into the forced resignations of seven U.S. attorneys.

The D.C. District Court explained, "Congress moreover is acting pursuant to legitimate use of its investigative authority. Notwithstanding its best efforts, the committee has been unable to discover the underlying causes of the forced terminations of the U.S. attorneys. The committee has legitimate reasons to believe that Ms. Miers' testimony can remedy that deficiency. There is no evidence that the committee is merely seeking to harass Ms. Miers by calling her to testify."

Finally, in the Miers case, there are some distinguishing factors. Keep in mind Ms. Miers was no longer in the White House. Number two, remember there was a complaint to the Office of Special Counsel already, a complaint about the firing of U.S. attorneys. And number three, there had been negotiations and all parties declared there was an impasse.

Here only one person declares that there is an impasse apparently and that is the Chairman.

And so I end by saying this is our watch. I end by saying we are better than this. If we want to go far, let us go together. If we want to go fast, go alone.

With that, I yield back.

Chairman ISSA. I thank the gentleman.

As our witness has chosen not to appear, we are unable to complete the full hearing. The committee stands in recess.

[Whereupon, at 10:28 a.m., the committee was recessed.]

## **APPENDIX**

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MATERIAL SUBMITTED FOR THE HEARING RECORD

**THE WHITE HOUSE**

WASHINGTON

July 10, 2014

The Honorable Darrell E. Issa  
Chairman  
Committee on Oversight and Government Reform  
United States House of Representatives  
Washington, DC 20515

Dear Chairman Issa:

I write in further response to your letters of March 18 and May 27, 2014, and to your most recent letter requesting testimony from Assistant to the President David Simas at a hearing regarding the White House Office of Political Strategy and Outreach (OPSO). Both my predecessor and I made significant efforts in our previous letters to accommodate your stated interest in this matter—namely, to understand better how OPSO is operating in compliance with the legal requirements of the Hatch Act. My last letter closed with an invitation to contact me should you have additional questions.

Instead of continuing that dialogue, you opted to seek testimony at a Committee hearing from an immediate advisor to the President, a request that you undoubtedly understand raises special concerns in light of the constitutional separation of powers. Accordingly, I write again to emphasize the salient features of OPSO and to ask that you provide an explanation of the specific questions concerning OPSO's compliance with the Hatch Act that the Committee believes remain unanswered. I am hopeful that we might together find a way to make additional information available to you that would answer any legitimate remaining questions, consistent with our respective constitutional interests.

Your prior correspondence suggests the Committee's interest in OPSO began as the result of its review of newspaper articles and the description of OPSO contained therein.<sup>1</sup> Even relying on these second-hand accounts, I did not read your letters to identify any reported OPSO activities that would violate the Hatch Act. But we did understand that the Committee would benefit from a better explanation of what OPSO does and, just as important, what it does not do. The previous letters we delivered to the Committee accordingly provided substantial information to that end.

First, regarding what OPSO does, the Office of Special Counsel (OSC) recognized in its 2011 report the appropriateness of having an office within the White House to provide the President with information about the current political environment and political issues nationwide. As we explained, OPSO therefore provides such information, along with advice and analysis regarding ongoing or contemplated policy initiatives. It also works with constituents

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<sup>1</sup> Letter from Hon. Darrell E. Issa, Chairman, H. Comm. on Oversight & Gov't Reform, to Hon. Denis McDonough, Chief of Staff, The White House (March 18, 2014) at 2, 3.

and political groups to evaluate public support for Presidential policies and initiatives. Additionally, it communicates with these groups as well as Democratic organizations to remain informed about the current political environment to advise and assist Presidential decision-making. By way of note, it conducts these activities with a very small staff—currently Mr. Simas, two other senior commissioned officers, and one administrative assistant, and coordinates closely with staff in my office, White House Communications, and other components of the Executive Office of the President.

Second, regarding what OPSO does not do, it bears little resemblance to the prior Administration's Office of Political Affairs, which was the subject of substantial criticism by OSC and by the Committee under former Chairman Waxman. As you know from the investigative report you cited in your March 18 letter, the Committee began investigating the prior Administration's Office of Political Affairs after learning of a "midday political briefing" by the Deputy Director of that office at the General Services Administration (GSA).<sup>2</sup> According to the investigative report, that office's Deputy Director displayed slides to GSA officials describing "the top 36 House Republicans the White House wanted to defend in the 2008 election . . . [and] the top 20 House Democrats the White House wanted to defeat"; briefing attendees also testified that the GSA Administrator asked her employees "how 'we' could help 'our candidates' in the next election."<sup>3</sup> In stark contrast to the Office of Political Affairs in the prior Administration, and consistent with the guidance in OSC's 2011 Report, it is worth again emphasizing the nature of OPSO's activities, as I explained them in my last letter to you:

[OPSO] has not been and does not intend to be[] operating a 'political boiler room' managing the 2014 midterm elections; providing political briefings to agency officials on targeted races or how to help candidates; coordinating political appointee travel to political events; tracking candidate fundraising; or encouraging political appointees to volunteer for political campaigns.

The letter we received last Thursday requesting testimony from Mr. Simas appears to be the Committee's response to the information we have provided thus far. Notably, the letter identifies no legitimate questions that remain unanswered after the Committee received the information we provided in our prior letters. Nor has the Committee identified any evidence that OPSO is operating contrary to our representations—and I trust you would bring any such evidence to my attention immediately. Rather, the letter expresses only a broad and undefined desire to question Mr. Simas on "the role and function of the White House Office of Political Strategy and Outreach," including on "whether the White House is taking adequate steps to ensure that political activity by Administration officials complies with relevant statutes . . ."<sup>4</sup> And it ostensibly seeks to justify this request by tersely mischaracterizing the Office's role and function as "handl[ing] coordination with local officeholders and Democratic Party committees

<sup>2</sup> Democratic Staff, H. Comm. on Oversight and Gov't Reform, 110<sup>th</sup> Cong., "The Activities of the White House Office of Political Affairs," Oct. 2008, available at <http://oversight-archive.waxman.house.gov/documents/20081015105434.pdf>.

<sup>3</sup> *Id.*

<sup>4</sup> Letter from Hon. Darrell E. Issa, Chairman, H. Comm. on Oversight & Gov't Reform, to David Simas, Director, Office of Political Strategy and Outreach (July 3, 2014).

at taxpayer expense,”<sup>5</sup> in contradiction of the descriptions of the Office that I and my predecessor provided in our prior letters to you (and that I have further provided in this letter).

We have already provided substantial information on the steps we have taken to ensure Hatch Act compliance. Thus, without an explanation from the Committee of its outstanding questions and continued interest in this matter, we are hindered in our ability to propose an appropriate accommodation of additional information. It is plain, however, that the extraordinary request for hearing testimony from Mr. Simas, which lacks a sufficient predicate and raises substantial separation of powers concerns, is not appropriate.

Administrations from both parties have long taken the position that congressional requests for information may impact important Executive Branch interests, especially requests that would undermine the President’s need for independence, autonomy and confidentiality in the conduct of his Office by discouraging his advisors from speaking candidly and openly with him and among themselves. These interests are especially acute when requests are directed at the President’s most senior advisors. As you know from over a decade of service in Congress, it is exceedingly rare that such individuals appear to testify before a Congressional Committee.

With regard to the request at hand for testimony from Mr. Simas, the combination of important Executive Branch confidentiality and other institutional interests and the corresponding absence of a sufficient predicate for his testimony presents a further difficulty. It raises the specter that the Committee’s desire for information may not be limited to OPSO’s compliance with the Hatch Act but instead may extend to internal information about Mr. Simas’ analysis and advice on the current political environment and how that informs the President’s development of policy and his other actions.

As articulated by former President Reagan in his 1982 Memorandum, this Administration believes that good-faith negotiations and the tradition of accommodation should continue as the primary means by which the Legislative and Executive Branches interact and resolve disagreements. Although you have not yet explained your outstanding questions and continued interest in this matter, in the spirit of that approach, I am providing with this letter certain documents that address specific questions you have raised in your letters. These include slides used in a mandatory Hatch Act training that was provided to White House staff this past spring and attended by all staff then and currently assigned to OPSO; a calendar invitation for a March 2014 meeting on the Hatch Act between members of the White House Counsel’s Office and lawyers from the Office of Special Counsel; email correspondence reflecting that the then and current OPSO staff received and were directed to review the reports by the Office of Special Counsel and the Committee on the prior Administration’s Office of Political Affairs in order to understand precisely what activities were permitted and what were not; and a memorandum that I sent to White House staff on July 9, 2014, reminding them of the law governing political activity by federal employees. As I trust you will appreciate, these documents demonstrate that we are applying the lessons of both OSC’s and the Committee’s reports, and will continue to do so going forward. As a further accommodation, and in order to address any other questions you have about OPSO, my staff would be pleased to brief the Committee on this issue. Please contact my office to arrange a time for that briefing. It is my hope that, taken together with the


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<sup>5</sup> *Id.*

information in this letter and the previous letters from me and my predecessor, these documents and the briefing will address your concerns or, at a minimum, aid you in determining whether you have any unanswered questions concerning OPSO that need to be addressed, so that we may work with you to answer those questions in a manner that appropriately reflects our respective interests.

In closing, I wish to assure you that it remains the policy of this Administration to comply with congressional requests for information to the fullest extent consistent with the constitutional and statutory obligations of the Executive Branch. I look forward to moving forward on this matter in that spirit of cooperation, and I and my staff are at your disposal for that purpose.

Sincerely,



W. Neil Eggleston

cc: The Honorable Elijah E. Cummings, Ranking Minority Member

The Honorable Carolyn Lerner, Special Counsel  
U.S. Office of Special Counsel

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ONE HUNDRED THIRTEENTH CONGRESS

## Congress of the United States

### House of Representatives

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VACANCY

July 11, 2014

Mr. W. Neil Eggleston  
Counsel to the President  
The White House  
Washington, D.C. 20500

Dear Mr. Eggleston:

Yesterday, you wrote to me regarding the Committee's invitation for David Simas, the Director of the White House Office of Political Strategy and Outreach (OPSO), to appear before the Committee at a hearing on July 16, 2014.<sup>1</sup> The Committee invited Mr. Simas to testify after the White House ignored two prior requests for documents that would have helped the Committee understand whether OPSO is complying with the Hatch Act and other statutes that apply to the use of taxpayer funds for political activities.<sup>2</sup> Surprisingly, your letter states that the White House Counsel's Office has "made significant efforts" to "accommodate" the Committee's concerns,<sup>3</sup> when in fact, the White House has yet to respond to the Committee's requests adequately. Consequently, I am left with no alternative but to use compulsory process to require Mr. Simas to appear before the Committee on July 16, 2014.

According to your letter, the invitation for Mr. Simas to testify "raises special concerns in light of the constitutional separation of powers."<sup>4</sup> These concerns did not impede the ability of former Committee Chairman Henry A. Waxman to conduct similar inquiries. In 2007, Chairman Waxman initiated a series of investigations into allegedly improper political activity in the Executive Branch. During the Committee's investigation—which spanned nearly two years—the staff interviewed or deposed 18 political appointees, including President Bush's political directors, Ken Mehlman, Matt

<sup>1</sup> Letter from W. Neil Eggleston, Counsel to the President, White House, to Hon. Darrell E. Issa, Chairman, H. Comm. on Oversight & Gov't Reform (July 10, 2014).

<sup>2</sup> Letter from Hon. Darrell E. Issa, Chairman, H. Comm. on Oversight & Gov't Reform, to Denis McDonough, Chief of Staff, The White House (Mar. 18, 2014); Letter from Hon. Darrell E. Issa, Chairman, H. Comm. on Oversight & Gov't Reform, to Denis McDonough, Chief of Staff, White House (May 27, 2014).

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

Mr. W. Neil Eggleston  
 July 11, 2014  
 Page 2

Schlapp, Sara Taylor, and Scott Jennings.<sup>5</sup> The Committee received nearly 70,000 pages of documents from the White House and agencies, and also issued a subpoena to the Chairman of the Republican National Committee to obtain e-mail records.<sup>6</sup>

I first wrote to the White House on March 18, 2014, requesting documents and information related to the reopening of the White House Office of Political Affairs (OPA),<sup>7</sup> as well as a briefing from White House staff.<sup>8</sup> A March 26, 2014, response from your predecessor failed to even acknowledge the Committee's requests for documents and a briefing.<sup>9</sup> In a second attempt to obtain the requested information, I wrote to the White House on May 27, 2014, requesting documents related to OPSO, and raising the possibility of using compulsory process to obtain the requested materials.<sup>10</sup> You provided a response on June 13, 2014, again ignoring the Committee's requests for documents.<sup>11</sup> On July 3, months after the Committee's initial requests for documents and a briefing, I wrote to Mr. Simas, requesting his appearance at a hearing to explore whether OPSO is in compliance with the Hatch Act.<sup>12</sup>

In your letter of July 10, you provided 185 pages of documents, most of which consist of two Hatch Act reports—one released by this Committee under Chairman Waxman in 2008, and one released by the U.S. Office of Special Counsel in 2011—related to political activity in the Bush White House.<sup>13</sup> Both are readily available online. You also offered to provide the briefing regarding OPSO that I initially requested on March 18, 2014—almost four months ago. I accept your offer to brief my staff in advance of next week's hearing. If, after the briefing, the Committee has no outstanding questions for Mr. Simas, I will reconsider whether it is necessary for him to appear at the hearing.

<sup>5</sup> Democratic Staff, H. Comm. on Oversight & Gov't Reform, 110th Cong., *The Activities of the White House Office of Political Affairs* (Oct. 2008), available at <http://oversight-archive.waxman.house.gov/documents/20081015105434.pdf> [hereinafter OGR Report].

<sup>6</sup> *Id.*

<sup>7</sup> In Jan. 2014, the Office of Political Affairs (OPA) was rebranded the Office of Political Strategy and Outreach. However, the Office of Special Counsel (OSC) previously found that simply renaming OPA is not a "viable solution under the law." See The White House, Press Release, *President Obama Announces Key White House Posts* (Jan. 24, 2014), available at <http://www.whitehouse.gov/the-press-office/2014/01/24/president-obama-announces-key-white-house-posts>; see also U.S. Office of Special Counsel, *Investigation of Political Activities by White House and Federal Agency Officials During the 2006 Midterm Elections* (Jan. 2011), available at <http://www.scribd.com/doc/47501194/STF-Report-Final> [hereinafter OSC Report].

<sup>8</sup> Letter from Hon. Darrell E. Issa, Chairman, H. Comm. on Oversight & Gov't Reform, to Denis McDonough, Chief of Staff, White House (March 18, 2014).

<sup>9</sup> Letter from Kathryn H. Ruemmler, Counsel to the President, White House, to Hon. Darrell E. Issa, Chairman, H. Comm. on Oversight & Gov't Reform (March 26, 2014).

<sup>10</sup> Letter from Hon. Darrell E. Issa, Chairman, H. Comm. on Oversight & Gov't Reform, to Denis McDonough, Chief of Staff, White House (May 27, 2014).

<sup>11</sup> Letter from W. Neil Eggleston, Counsel to the President, White House, to Hon. Darrell E. Issa, Chairman, H. Comm. on Oversight & Gov't Reform (June 13, 2014).

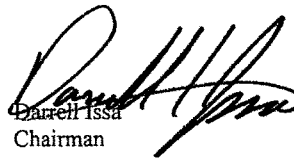
<sup>12</sup> Hearing Invitation from Hon. Darrell E. Issa, Chairman, H. Comm. on Oversight & Gov't Reform, to David Simas, Director, Office of Political Strategy & Outreach, White House (July 3, 2014).

<sup>13</sup> OGR report, *supra* note 5; see also OSC Report, *supra* note 6.

Mr. W. Neil Eggleston  
July 11, 2014  
Page 3

Please contact Committee staff at (202) 225-5074 to schedule a briefing. Thank you for your attention to this matter.

Sincerely,

  
Darrell Issa  
Chairman

Enclosure

cc: The Honorable Elijah E. Cummings, Ranking Minority Member

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ONE HUNDRED THIRTEENTH CONGRESS

## Congress of the United States House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM  
2157 RAYBURN HOUSE OFFICE BUILDING  
WASHINGTON, DC 20515-6143

MAJORITY (202) 225-5074  
FACSIMILE (202) 225-3874  
MINORITY (202) 225-5051  
<http://oversight.house.gov>

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VACANCY

July 15, 2014

Mr. W. Neil Eggleston  
Counsel to the President  
The White House  
Washington, D.C. 20500

Dear Mr. Eggleston:

The Clinton White House, Bush White House, and other administrations before them have all faced congressional oversight of political activity supported by taxpayer funds. Under this Administration, like previous Administrations, members of President Obama's cabinet have committed violations of the Hatch Act, which draws a line between campaign and official business.

Today, my staff received a briefing from White House staff regarding the activities of the White House Office of Political Strategy and Outreach (OPSO) as well as Hatch Act compliance. White House officials provided this briefing to Committee staff nearly four months after I initially wrote to the White House on March 18, 2014, requesting documents and information related to the reopening of the White House Office of Political Affairs (OPA), as well as a briefing.<sup>1</sup> Despite having multiple opportunities before now to provide requested documents and a briefing to Committee staff, the White House only offered a briefing after I subpoenaed testimony from David Simas, the Director of the White House OPSO, at tomorrow's full Committee hearing regarding OPSO.<sup>2</sup> The briefing provided to Committee staff today, while helpful and appreciated, did not answer all questions and did not put the White House on the record about changes made to its political office.

During the briefing, White House staff declined our request to discuss compliance with the Committee's document requests or to even describe the process and identify relevant officials involved in the decision to reopen the White House political office. While they took issue with some media characterizations of the office, they were unable to say whether or not the White House pursued corrections.

<sup>1</sup> Letter from Hon. Darrell E. Issa, Chairman, H. Comm. on Oversight & Gov't Reform, to Denis McDonough, Chief of Staff, The White House (Mar. 18, 2014).

<sup>2</sup> Hearing Invitation from Hon. Darrell E. Issa, Chairman, H. Comm. on Oversight & Gov't Reform, to David Simas, Director, Office of Political Strategy & Outreach, The White House (July 3, 2014).

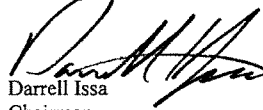
Mr. W. Neil Eggleston  
July 15, 2014  
Page 2

In prior administrations, White House political officials have encountered difficulties squaring their activities with the prohibitions on political or campaign-related activities of federal officials outlined in the Hatch Act. It strains credulity that this Administration has, in contrast to its predecessors, uniquely resolved all concerns about political activity and should not be subject to the same level of congressional oversight requests for testimony and documents as previous administrations.

The Committee has outstanding questions for Mr. Simas, who did not take part in the briefing, and it is necessary for him to appear at tomorrow's hearing. Mr. Simas is still under subpoena and is expected to appear at tomorrow's hearing. I believe his on-the-record testimony will provide valuable insight into White House efforts to ensure appropriate use of taxpayer funds.

If you have any questions, please contact Committee staff at (202) 225-5074. Thank you for your attention to this matter.

Sincerely,



Darrell Issa  
Chairman

cc: The Honorable Elijah E. Cummings, Ranking Minority Member

**Testimony of Carolyn Lerner, Special Counsel  
and Ana Galindo-Marrone, Chief, Hatch Act Unit  
U.S. Office of Special Counsel**

**U.S. House of Representatives  
Committee on Oversight and Government Reform**

**“White House Office of Political Affairs: Is Supporting Candidates and Campaign Fund-  
Raising an Appropriate Use of a Government Office?”**

**July 16, 2014, 10:00 A.M.**

Chairman Issa, Ranking Member Cummings, and Members of the Committee:

Thank you for the opportunity to testify today about the U.S. Office of Special Counsel (OSC), and our enforcement of the Hatch Act. I am joined today by Ana Galindo-Marrone, Chief of OSC’s Hatch Act Unit.

OSC’s primary mission is to protect the merit system and provide a safe and secure channel for government whistleblowers who report waste, fraud, abuse, and threats to public health and safety. The agency also protects veterans and service members from discrimination under the Uniformed Services Employment and Reemployment Rights Act (USERRA). Finally, OSC enforces the Hatch Act, which was enacted in 1939 to restrict the partisan political activity of federal employees and certain employees of state and local governments.

This is the fourth time I have had the opportunity to testify before the Oversight Committee, including a few weeks ago in June. My testimony in May 2012 provided the Committee with recommendations for strengthening and modernizing the Hatch Act. Our discussions and your subsequent successful legislative efforts resulted in the first significant modifications to the Hatch Act in two decades.

The Hatch Act Modernization Act of 2012 (P.L. 112-230), sponsored by Ranking Member Cummings, Representative Chaffetz, Congresswoman Norton, and others, largely removed the Hatch Act’s prohibition on state and local employees running for partisan elective office. This important reform reduced unnecessary federal involvement in state and local elections, and has allowed OSC to better allocate its scarce resources toward more effective Hatch Act enforcement. The Modernization Act also promotes fairness by providing for a range of penalties in federal sector Hatch Act cases and allows District of Columbia employees to run as independents in partisan local elections. I thank the Committee for its efforts to pass this important law and for its ongoing interest in OSC’s Hatch Act enforcement efforts.

Our testimony today will focus on: (1) OSC’s recent enforcement actions, (2) education and outreach efforts, and (3) the White House Office of Political Strategy and Outreach.

Office of Special Counsel  
 July 16, 2014  
 Page 2 of 6

### **Significant Enforcement Actions**

Our testimony provides a summary of recent enforcement actions, both to highlight the importance of the law and to serve as a reminder to federal employees of the Hatch Act's restrictions on certain partisan political activity.

In general, the Hatch Act prohibits all federal employees from soliciting, accepting, or receiving political contributions from any person and, with limited exceptions, engaging in any political activity while on duty or in the federal workplace. Federal employees, including high-ranking officials, may not engage in political activity in their official capacity or otherwise use their official authority for the purpose of interfering with or affecting the result of an election. Some federal employees are further restricted under the Hatch Act, meaning they may not take an active part in partisan political management or partisan political campaigns.

Recent cases that illustrate these restrictions include the following:

- In June 2014, OSC entered into a settlement agreement with an Internal Revenue Service (IRS) employee. The employee agreed to a 100-day unpaid suspension for violating the Hatch Act. The agreement resolved a formal Hatch Act complaint OSC filed with the Merit Systems Protection Board (MSPB) in April 2014. OSC's complaint alleged that, when fielding taxpayers' questions on an IRS customer service help line, the employee repeatedly urged taxpayers to reelect President Barack Obama in 2012 by delivering a chant based on the spelling of the employee's last name. In the settlement agreement, the IRS employee acknowledged that he had used his authority and influence as an IRS customer service representative for a political purpose and did so while at work.
- In May 2014, the MSPB granted OSC's request to remove a U.S. Postal Service (USPS) employee from federal service for violating the Hatch Act. Specifically, OSC's complaint alleged that the employee twice ran in partisan elections for a seat in the U.S. House of Representatives. In addition, he solicited political contributions for his campaigns. OSC and USPS repeatedly warned the worker that his actions violated the Hatch Act and requested that he comply with the law either by withdrawing from the elections or ending his federal employment. Despite these repeated warnings, the employee refused to comply with the law. This was the first MSPB decision under the Hatch Act Modernization Act, which took effect in early 2013.
- Under an April 2014 settlement agreement with OSC, an attorney at the Federal Election Commission (FEC) agreed to resign and is barred from employment within the federal executive branch for two years after admitting to violations of the Hatch Act. The FEC referred to OSC evidence that the employee posted dozens of partisan political tweets, including many soliciting campaign contributions to President Obama's 2012 reelection campaign and other political campaigns. The employee also participated in an internet broadcast via webcam from an FEC facility, criticizing the Republican Party and presidential candidate Mitt Romney. Following a joint investigation between OSC and the FEC Office of

Office of Special Counsel  
 July 16, 2014  
 Page 3 of 6

Inspector General, the employee admitted to violating the Hatch Act and resigned.

- Under an April 2014 settlement agreement with OSC, a federal civilian employee with the U.S. Air Force agreed to serve a 40-day suspension without pay for repeatedly violating the Hatch Act's prohibitions against engaging in political activity while on duty and in the workplace, despite warnings to stop his behavior. The employee sent numerous partisan political e-mails in opposition to then-candidate President Obama using a government account to a list of as many as 60 federal employees. The employee sent each e-mail while on duty in the months leading up to the 2012 election. The employee admitted knowing about the Hatch Act's restrictions, and even after receiving warnings from his supervisors, persisted in sending more e-mails.
- Under an April 2014 settlement agreement with OSC, an IRS tax advisory specialist in Kentucky served a 14-day suspension for promoting her partisan political views to a taxpayer she was assisting during the 2012 presidential election season. The employee told a taxpayer she was "for" the Democrats because "Republicans already [sic] trying to cap my pension and . . . they're going to take women back 40 years." She continued to explain that her mom always said, "'If you vote for a Republican, the rich are going to get richer and the poor are going to get poorer.' And I went, 'You're right.' I found that out." The employee's supervisor had advised her about the Hatch Act's restrictions just weeks before the conversation. The employee told the taxpayer, "I'm not supposed to voice my opinion, so you didn't hear me saying that." In the settlement agreement, the employee admitted to violating the Hatch Act's restrictions against engaging in political activity while on duty and in the workplace and using her official authority or influence to affect the result of an election.

In addition to these recent actions, in September 2012, in response to a Hatch Act complaint filed by Chairman Issa and others, OSC sent findings to President Obama from its investigation of improper political activity by Secretary of Health and Human Services Kathleen Sebelius. OSC concluded that Secretary Sebelius violated the Hatch Act when she made extemporaneous partisan remarks in a speech delivered in her official capacity on February 25, 2012. The Hatch Act allows federal employees, including officials appointed by the President and confirmed by the Senate, to make partisan remarks when speaking in their personal capacity, but not when using their official title or when speaking about agency business.

After the event in question, the Department of Health and Human Services (HHS) reclassified the trip from official to political and issued a statement to that effect. The Democratic National Committee reimbursed the U.S. Treasury for all costs and expenses associated with Secretary Sebelius's travel to the event. OSC found no evidence that Secretary Sebelius made any other political statements in her official capacity. Nevertheless, this was the first time OSC found a sitting cabinet secretary in violation of the Hatch Act. It again serves as a reminder to employees, at all levels, of the importance of adhering to the Hatch Act's restrictions.

Office of Special Counsel  
 July 16, 2014  
 Page 4 of 6

### **Education and Outreach**

To better educate the federal workforce and prevent Hatch Act violations from occurring in the first place, OSC conducts training and outreach sessions for employees. During fiscal year 2014, OSC has been working, with limited resources, to ensure that federal, state, D.C., and local government employees understand their rights and responsibilities under the Hatch Act by: (1) conducting trainings at federal agencies and national conferences; (2) updating our website, including maintaining a comprehensive list of frequently asked questions and select OSC advisory opinions; and (3) using a listserv to quickly inform federal agency ethics officials of recent Hatch Act decisions, developments, enforcement actions, and guidance.

In this fiscal year alone, OSC has conducted 21 outreach presentations to diverse federal populations. This includes rank and file employees, senior officials and political appointees, and union groups. As we move closer to the 2014 mid-term elections, we expect to increase the number of outreach and training events nationwide. The number conducted to date is already more than double the number of events in 2013. OSC also works with Federal News Radio and other media outlets to promote Hatch Act education and compliance.

In addition, OSC provides technical assistance to agencies, employees, and the public at large through its nationwide advisory program. We provide Hatch Act information and assistance to congressional offices, cabinet members, the media, and local, state, and federal government officials. To assist with this effort, OSC maintains telephone and email Hatch Act advisory hotlines, and responds to over a thousand formal and informal inquiries annually.

Over the course of several administrations, it also has been OSC's practice to brief White House lawyers on the Hatch Act, who in turn conduct Hatch Act trainings for White House staff. Our meetings typically occur at the start of a new administration. We provide updates as needed during the election season. OSC is also available to White House personnel to provide technical assistance or informal advisory opinions in response to specific questions or concerns.

Consistent with this practice, on March 20, 2014, OSC conducted an outreach session for White House lawyers to provide guidance on a number of pertinent Hatch Act topics. At the session, OSC discussed our latest guidance on "use of official authority" restrictions. This includes rules on use of official title at partisan events, guidelines for speeches given in an employee's official capacity, and answering campaign questions at official events. In addition, OSC covered rules on solicitation, reminding employees that speaking at fundraisers is permissible, while soliciting donations at events or hosting fundraisers is not. OSC discussed the limitation on political activity on duty or in the federal workplace. Only commissioned officers in the White House may engage in a limited amount of political activity on duty or in a federal building. All other employees are barred from such activity. OSC updated White House staff on social media restrictions and discussed the distinction between official and personal social media accounts. Finally, OSC discussed rules concerning official versus political travel, including OSC's latest advisory opinion on this issue.

Office of Special Counsel  
July 16, 2014  
Page 5 of 6

**White House Office of Political Strategy and Outreach**

OSC received copies of correspondence between Chairman Issa and the White House concerning the establishment of the Office of Political Strategy and Outreach (OPSO). The White House did not consult with OSC about establishing the OPSO. However, based on our review of the White House correspondence to the Committee, it appears that the White House adhered to OSC guidance in determining the scope of activity for the office. To the extent that OPSO's activities are limited to those described in the White House correspondence, OPSO appears to be operating in a manner that is consistent with Hatch Act restrictions.

OSC will continue to fulfill the dual advisory and enforcement role assigned to it by Congress under the Hatch Act. If the White House seeks additional guidance or clarification on any activities of the OPSO, we will provide advisory assistance to ensure compliance with Hatch Act restrictions. If OSC is presented with credible evidence of a violation, OSC would initiate an investigation to determine if any activity exceeds permissible Hatch Act boundaries.

We thank you again for the opportunity to testify today, and would be happy to answer the Committee's questions.

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**Carolyn N. Lerner, Special Counsel**

The Honorable Carolyn N. Lerner heads the United States Office of Special Counsel. Her five-year term began in June 2011. Prior to her appointment as Special Counsel, Ms. Lerner was a partner in the Washington, D.C., civil rights and employment law firm Heller, Huron, Chertkof, Lerner, Simon & Salzman, where she represented individuals in discrimination and employment matters, as well as non-profit organizations on a wide variety of issues. She previously served as the federal court appointed monitor of the consent decree in *Neal v. D.C. Department of Corrections*, a sexual harassment and retaliation class action.

Prior to becoming Special Counsel, Ms. Lerner taught mediation as an adjunct professor at George Washington University School of Law, and was mediator for the United States District Court for the District of Columbia and the D.C. Office of Human Rights.

Ms. Lerner earned her undergraduate degree from the University of Michigan, where she was selected to be a Truman Scholar, and her law degree from New York University (NYU) School of Law, where she was a Root-Tilden-Snow public interest scholar. After law school, she served two years as a law clerk to the Honorable Julian Abele Cook, Jr., Chief U.S. District Court Judge for the Eastern District of Michigan.

**Ana Galindo-Marrone, Chief, Hatch Act Unit**

Ana Galindo-Marrone began her employment at OSC in 1998, and in 1999 she joined the prosecution division. She has been chief of the Hatch Act Unit since 2000. The Unit enforces compliance with the Act by investigating complaint allegations and litigating Hatch Act cases before the Merit Systems Protection Board. In addition, the Unit is responsible for a nationwide program that provides Hatch Act advisory opinions to federal, state, and local officials, as well as the public at large.

Ms. Galindo-Marrone has been a frequent presenter at conferences and forums on the Hatch Act and OSC's enforcement program. She has been a guest on several radio shows, including The Kojo Nnamdi Show, FEDtalk, Federal Drive, and In Depth. She also has testified or served as a technical consultant before several congressional committees considering Hatch Act reform, including the June 21, 2011, House Committee on Oversight and Government Reform hearing, "The Hatch Act: The Challenges of Separating Politics from Policy."

Prior to joining OSC, Ms. Galindo-Marrone was a staff attorney for the School Board of Miami-Dade County, Florida. Ms. Galindo-Marrone, who is a native of Miami, Florida, received her law degree, cum laude, from the University of Miami School of Law.

**Statement of Scott A. Coffina  
Before the United States House of Representatives  
Committee on Oversight and Government Reform**

**Hearing:  
White House Office of Political Affairs: Is Supporting Candidates and  
Campaign Fund-Raising an Appropriate Use of a Government Office?**

**Wednesday, July 16, 2014  
Washington, DC**

Chairman Issa, Ranking Member Cummings, and members of the Committee, my name is Scott Coffina and I appreciate your invitation to participate in this inquiry about the White House Office of Political Strategy and Outreach (“OPSO”), and the important question of whether supporting candidates and campaign fundraising is an appropriate use of a government office.

I have had the privilege to serve in President Reagan’s Office of Political Affairs as a staff assistant and the subsequent honor to advise that same office and the honorable men and women who served in it as an Associate White House Counsel during the last two years of the George W. Bush Administration. I believe that a political affairs office plays a valuable role in the operations of the White House. The president is not only the head of our government, but also the head of his party, and whether looking at it from policy strategy to electoral politics – including a president’s own re-election effort – “politics” are a constant in the White House, and the political affairs office provides him necessary support for both roles.

The political office in the White House historically has performed a number of useful and legally benign functions, serving as an important conduit to the president’s supporters on policy issues, personnel decisions and appointments. It also serves an appropriate clearinghouse function, vetting the many requests for the president’s assistance from political parties and candidates, while pitting them internally against the other competing demands on the president’s time. As I have noted in prior testimony before this Committee, having a defined political office in the White House allows for greater discipline in adhering to the Hatch Act within the White House and better visibility and accountability to Congress and the Office of Special Counsel in their respective oversight and enforcement functions.

The Hatch Act accommodates the unique environment of the White House. The president and vice president are exempt, and employees within the Executive Office of the President may engage in political activities that are otherwise prohibited while on duty and in a federal building, as long as their duties continue outside of normal working hours and while they are away from their normal posts. Note that the law does not make this distinction based upon the position a White House employee holds, or whether or not they are commissioned officers, but rather whether they are essentially always on duty.

This limited exception in the Hatch Act for employees of the EOP (and for Senate-confirmed appointees) undeniably is intended to accommodate the president’s dual role and his need for the assistance of his staff while carrying out his political activities. After all, there are many employees throughout the government whose duties extend beyond normal working hours and the immediate confines of their offices, yet the exception in the Hatch Act applies only to EOP employees.

Nevertheless, even the least restricted White House employees do operate under certain Hatch Act restrictions. For example, they may not use their “official authority or influence for the purpose of interfering with or affecting the result of an election.” Nor may they engage in political activity where the costs are paid for with funds “derived from the Treasury of the United States.”

There is cause to be concerned about the new OPSO. This Administration's record concerning compliance with the Hatch Act is spotty at best. In late 2009 or early 2010, former White House Chief of Staff Rahm Emanuel attempted to interfere with Pennsylvania's Democratic Senate primary by dispatching former President Bill Clinton to offer Joe Sestak a position in the Administration if he would agree to drop out of the primary and cede the election to then-Senator Arlen Specter. When questions were raised, the White House released a legal memorandum by the White House Counsel, who concluded that there was no wrongdoing because "[t]he Democratic Party leadership had a legitimate interest in averting a divisive primary fight . . . ."

The White House Counsel's post-hoc analysis actually proved the violation of the Hatch Act. It is a quintessential Hatch Act violation for the chief of staff to use his official authority by generating a job offer to entice a candidate to drop out of an election in order to advance the prospects of his political party. Rahm Emanuel was not working in the White House to serve the "legitimate" interests of the "Democratic Party leadership," but to serve the interests of you and me and our fellow citizens.

The Office of Special Counsel, which is charged with enforcing the Hatch Act, apparently never pursued an investigation of the Sestak job offer, but OSC did investigate and find that former Health & Human Services Secretary Kathleen Sebelius violated the Hatch Act in 2012.

In February 2012, Secretary Sebelius, during an official appearance at the Human Rights Campaign's gala in Charlotte, went off script to exhort the crowd that "It's hugely important to make sure that we reelect the president and elect a Democratic governor here in North Carolina." Following media inquiries about her obvious encroachment into partisan political advocacy at an official event, Secretary Sebelius took steps to have the Obama campaign and/or the Democratic National Committee reimburse the Treasury for her travel expenses. While reclassifying the expenses was a positive step, she could not un-ring the bell of using the platform of an official appearance to engage in political activity. Investigating a complaint about her speech in Charlotte, OSC determined that Secretary Sebelius violated the Hatch Act and, pursuant to the statute, referred it to the president to take "appropriate action."

"Appropriate action" for any other federal employee who violates the Hatch Act at that time was, presumptively, termination from employment. However, President Obama never took any action against Secretary Sebelius for violating the law. When asked about the matter shortly after it was referred from the Special Counsel's office, White House Press Secretary Jay Carney said, "I think it's safe to assume that action has been taken by the secretary and department to remedy what was the result of an inadvertent error based on extemporaneous remarks."

The IRS targeting scandal, which has been of great interest to this Committee, also reflects clear violations of the Hatch Act (in addition to other laws) if, as it appears, the official actions taken by IRS employees in subjecting 501(c)(4) applicants with conservative-sounding names to extra scrutiny and delayed approvals were motivated by a desire to help the Democratic party by keeping these groups out of the political arena. It is unclear whether OSC is investigating Lois Lerner or anyone else at the IRS for possible Hatch Act violations for their

roles in the targeting scandal, but two lower level employees have faced discipline this year. In these cases, two customer representatives advocated the re-election of President Obama or the defeat of the Republicans in the 2012 election cycle.

Consider the messages the Administration has sent concerning these violations of the Hatch Act: government jobs exist to advance the interests of the party, not the public; cabinet secretaries and chiefs of staff are above the law, but line employees are not. These sentiments are exactly what the Hatch Act was passed in 1939 to combat.

Finally, note the president's remarks at an official event in Scranton, Pennsylvania in November 2011 on the jobs bill he was promoting at the time. At this speech in the Scranton High School gym, the president criticized Republicans for "blocking" this legislation, prompting "boos" from his audience. According to the transcript of the "Remarks on the American Jobs Act," released by the White House Press Office, President Obama (one year away from reelection and in this battleground state) then touted his own accomplishments on a broad range of subjects:

But here's the good news, Scranton. Just like you don't quit, I don't quit. (Applause.) I don't quit. So I said, look, I'm going to do everything that I can do without Congress to get things done. (Applause.) . . . So let's just take a look over the past several weeks. We said, we can't wait. We just went ahead and started taking some steps on our own to give working Americans a leg up in a tough economy. For homeowners, I announced a new policy that will help families refinance their mortgages and save thousands of dollars. (Applause.) For all the young people out here -- (applause) -- we reformed our student loan process to make it easier for more students to pay off their debts earlier. (Applause.) For our veterans out here -- and I see some veterans in the crowd -- (applause) -- we ordered several new initiatives to help our returning heroes find new jobs and get trained for those jobs. (Applause.) . . . .

And in fact, last week I was able to sign into law two new tax breaks for businesses that hire veterans, because nobody out here who is a veteran should -- we have to make sure that they are getting the help that they need.

AUDIENCE MEMBER: Thank you, Mr. President!

THE PRESIDENT: And by the way, I think we're starting to get, maybe, to the Republicans a little bit, because they actually voted for this veterans bill. I was glad to see that. (Applause.)

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Now, I know you hear a lot of folks on cable TV claiming that I'm this big tax-and-spend liberal. Next time you hear that, you just remind the people who are saying it that since I've taken office, I've cut your taxes. (Applause.)

Your taxes today – the average middle-class family, your taxes today are lower than when I took office, just remember that. (Applause.) We have cut taxes for small businesses not once, not twice, but 17 times.

This checkered history of the Administration with the Hatch Act provides a basis for some skepticism about the rebranded White House political office, as do the circumstances of its re-establishment in January 2014. OPSO was re-opened as this important election cycle took shape, and as President Obama was promising Democrats that keeping control of the Senate was his top priority this year. The media consistently reported that the rebranded political office was driven by the midterm election; the Washington Post even reported on February 20 that top White House officials, including the new political director, were working with Senate leaders to “align the legislative calendar with the administration’s activities to help endangered Senators.”

Moreover, recent reports have noted that President Obama has attended 393 fundraisers so far in his presidency which amounts to around one every 5 days. As a point of reference, President Bush had attended 216 at the same point in his second term. While certainly a good portion of these fundraisers presumably supported President Obama’s own reelection effort in 2011-12, much of this political activity would have been done on behalf of his party or particular candidates, invoking all of the same questions about how these events were generated, planned and executed – and by whom within the White House – that OSC focused on with respect to the 2006 election cycle.

In 2011, the Office of Special Counsel issued a report on the political activities by the Bush White House and other federal officials during the 2006 election cycle. This report was highly critical of how the Office of Political Affairs operated in the 2006 cycle, characterizing it as a political boiler room. One thrust of this Committee’s investigation is how, under the standards used by OSC in its 2011 report, the activities of the rebranded White House political office compare to those of the Bush White House, about which OSC was so critical.

The name and the organization of the new office might be different than OPA, but there is ample reason to be concerned that the White House is violating the Hatch Act, most notably by spending taxpayer money for “official” events that under OSC’s standards in its 2011 report, should be classified as political events.

Two recent “mixed” official and political trips by President Obama deserve particular scrutiny. During a trip to Minnesota on June 26-27, 2014, the President added official events to a previously-scheduled fundraiser for the Democratic Congressional Campaign Committee, including a visit to a job placement center with Senator Al Franken, who is up for reelection. Just last week, the White House added an “official” economic speech to a fundraising trip to Denver for Senator Mark Udall, who is in a close race for reelection. As a result of the official activities added to the political trip, the cost of the president’s travel was borne to a greater degree by the taxpayers, and the campaign committees caught a financial break.

The Minnesota trip presents a good case study for the application of the analysis in the OSC report. OSC criticized one “official” event in the 2006 election cycle because the participating Cabinet official acknowledged the House member in whose district it occurred (and

who was in attendance at the event) as “a strong and effective advocate for your interests in the Congress.” Similarly, in at the “official” event on the economy in Minnesota, President Obama acknowledged, among others, Minnesota’s “wonderful” Senator (and candidate), Al Franken. . Notably, at the jobs speech in Scranton discussed above, President Obama acknowledged Pennsylvania Senator Bob Casey, who was running for reelection, as a “great Senator” even though Senator Casey did not even attend the event.

Personally, I wouldn’t quarrel with the president’s acknowledgement of Senator Franken during this official event, but according to the OSC’s report, President Obama’s polite compliment of the Senator transformed the event into a political one. Moreover, under the OSC’s analysis, the addition of the trip with Senator Franken to the jobs placement program raises serious questions about whether that event was added to aid the Senator’s electoral chances. This is precisely the type of subjective analysis that can be applied to almost any official event in a battleground state or involving a Member of Congress running for reelection, and a primary reason why I was critical of the OSC’s analysis in my 2011 testimony before this Committee. At that time, I recommended that presidential and surrogate events be evaluated according to objective criteria, focusing on the execution of the event more than its subjective motivation.

Under even this objective standard, however, the Minnesota economy speech is problematic under the Hatch Act. Referring to House Republicans explicitly at this “official” event, the president said, “Rather than invest in working families getting ahead, they actually voted to give another massive tax cut to the wealthiest Americans.” After the audience “Booed,” President Obama responded, “Don’t boo, by the way. *I want you to vote.* I mean, over and over again, they show that they’ll do anything to keep in place systems that really help folks at the top but don’t help you” (emphasis added). This brief passage in the president’s 35-minute speech alone should transform this official event into a political event whose expenses should be borne by Senator Franken’s campaign or the Democratic Party, not the taxpayers.

It is ironic that this Committee meets today to address many of the same questions were raised during investigations and hearings in 2008. The Members are just sitting on different sides of the room. The situation calls for a renewed effort to establish a workable framework to reconcile the unique federal workplace that is the White House, with the fundamental restrictions of the Hatch Act. Congress could pass legislation that could ban an office like OPSO or its predecessor, OPA, but that will not make political activity in the White House go away. It obviously did not – could not – after President Obama closed OPA at the outset of his reelection campaign. It just made it harder for this Committee or for OSC to know how the political activities at the White House were run.

I do not advocate applying OSC’s standards from its 2011 report to evaluate the current White House political office. I respectfully submit that OSC’s approach to evaluating the conduct of the prior administration was not consistent with the text of the Hatch Act or with the considerable latitude that the Hatch Act affords White House employees in support of the president’s political activities. Rather, when it comes to questions about the propriety of White House activities under the terms of the Hatch Act, I would focus on the law’s prohibition on the use of one’s official authority to advance the election or defeat of a candidate or political party,

and on the potential use of spending Treasury funds for political activities. Then, to try to develop some standards to guide White House employees who are allowed to engage in political activity while on duty, I suggest applying objective criteria such as:

- White House employees should be able to inform and advise the president on political matters and to support directly the political activities of the president, subject to the overriding Hatch Act consideration that the costs of partisan political activities are not borne by the taxpayers. This Committee, or the OSC in its rulemaking capacity, might consider a reasonable timekeeping requirement to allow for some evaluation of the percentage of time spent by White House employees on partisan political activity to ensure that taxpayers are not paying the salary of an employee that ought to be covered by a political party.
- Whether events are properly classified as official or political should be determined objectively, by such criteria as:
  - Do the theme and content of the remarks in an official event reflect a matter of public concern, particularly in the locality where the event occurs?
  - Do the remarks and the setting for an official event align with its stated official purpose and not resemble a campaign stump speech and rally?
  - Where did the idea for the event originate from?
  - Is it part of an overall strategy to advance a particular public policy?
  - Did an invitation to participate in an “official” event in the district of an embattled incumbent originate from her Congressional office or from her campaign staff or the White House political office?
  - Was the official event added to a pre-existing political trip?
  - Is there a logical nexus between the selected location and the subject matter of an official event aside from an incidental political benefit? Is there a pattern of events in battleground states without such a nexus, suggesting a purpose to the events that is predominantly political rather than official?

Thank you again for the opportunity to again share my views about the application of the Hatch Act to the unique environment of the White House.